IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 7191 of 2015 (Y)

PETITIONER:

M/S.P.H. MOHAMMED KUNJU & BROTHER, AGED 79 YEARS
MARKET ROAD, ERNAKULAM
PIN - 682 035
REPRESENTED BY ITS PARTNER P.H.MOHAMMED KUNJU

BY ADV. SRI.MOHAMMED RAFIQ

RESPONDENT(S):
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1. **THE ASSISTANT COMMISSIONER (ASSESSMENT), COMMERCIAL TAXES, SPECIAL CIRCLE - I, ERNAKULAM, PIN - 682 015.**

2. **THE STATE OF KERALA, REPRESENTED BY THE SECRETARY, COMMERCIAL TAXES DEPARTMENT, TRIVANDRUM- 695 001.**

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

STK

WP(C).No. 7191 of 2015 (Y)

APPENDIX

PETITIONER'(S) EXHIBITS :

EXT.P-1:	**THE TRUE COPY OF THE NOTICE BEARING NO.32070232135/2009-10 DATED 27.11.2014 FOR THE YEAR 2009-10 ISSUED BY THE IST RESPONDENT UNDER SECTION 25(1) OF THE KERALA VALUE ADDED TAX ACT, 2003.**
EXT.P-2:	**THE TRUE COPY OF THE NOTICE BEARING NO.32070232135/2009-10 DATED 27.11.2014 FOR THE YEAR 2009-10 ISSUED BY THE IST RESPONDENT UNDER RULE 6(5) OF THE CENTRAL SALES TAX (KERALA) RULES, 1957.**
EXT.P-3:	**THE TRUE COPY OF THE APPLICATION DATED 10.12.2014 FOR EXTENSION OF TIME FILED IN CONNECTION WITH THE ENQUIRY UNDER SECTION 25(1) OF THE KERALA VALUE ADDED TAX ACT, 2003 RELATING TO THE YEAR 2009-10.**
EXT.P-4:	**THE TRUE COPY OF THE APPLICATION DATED 10.12.2014 FOR EXTENSION OF TIME FILED IN CONNECTION WITH THE ENQUIRY UNDER RULE 6(5) OF THE CENTRAL SALES TAX (KERALA) RULES, 1957 RELATING TO THE YEAR 2009-10.**
EXT.P-5:	**THE TRUE COPY OF THE NOTICE BEARING NO.32070232135/2006-07 DATED 15.5.2014 ISSUED BY THE IST RESPONDENT.**
EXT.P-6:	**THE TRUE COPY OF THE ASSESSMENT ORDER DATED 27.12.2014 UNDER SECTION 25(1) OF THE KERALA VALUE ADDED TAX ACT, 2003 RELATING TO THE YEAR 2009-10 PASSED BY THE IST RESPONDENT.**
EXT.P-7:	**THE TRUE COPY OF THE ASSESSMENT ORDER DATED 27.12.2014 UNDER RULE 6(5) OF THE CENTRAL SALES TAX (KERALA) RULES, 1957 RELATING TO THE YEAR 2009-10 PASSED BY THE IST RESPONDENT**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

STK

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.7191 of 2015 (Y)

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Dated this the 11th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Exts.P6 and P7 assessment orders that have been passed in relation to the petitioner under the Kerala Value Added Tax Act, 2003 and Central Sales Tax Act, 1956, respectively for the assessment year 2009 – 2010. The sole ground of challenge against Exts.P6 and P7 orders is that, the said orders were passed without hearing the petitioner.

2. The learned Government Pleader, on instructions would submit that, a pre-assessment notice was issued to the petitioner that was served on him on 04.12.2014 and the petitioner had in response to the same, sought an extension of time by 15 days for filing the reply to the pre-assessment notice. Thereafter, the petitioner did not either file the reply or appear for the hearing within the extended period of 14 days, that was sought for by him. It was under those circumstances, the 1st respondent proceeded to complete the assessment as evidenced by Exts.P6 and P7 orders.

3. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that the petitioner was served with a pre-assessment notice and he had sought for additional time for filing a detailed reply. It is the contention of the learned counsel for the petitioner that, the petitioner was bonafide expecting a communication from the 1st respondent as regards the posting of the

case for hearing, and an intimation as to whether or not the time sought for was granted. It was only when there was no such communication that the petitioner realised that, no further time would be granted, by which time it was too late, inasmuch as Exts.P6 and P7 orders had already been passed. It is the contention of the learned counsel for the petitioner that the dispute with the department is entirely factual and he has all the records to show that there will be no tax liability against him.

4. Taking note of the rival contentions, and considering the fact that there will be no prejudice caused to the revenue if the 1st respondent is asked to consider the matter afresh, I quash Exts.P6 and P7 orders and direct the 1st respondent to pass fresh orders of assessment in relation to the petitioner for the assessment year in question, within a period of one month from the date of receipt of a copy of this judgment, after hearing the petitioner.

5. The petitioner shall appear before the 1st respondent, with all the materials that he seeks to rely on, to substantiate his contentions on merits, at 11 a.m. on 25.03.2015.

The writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/12/03/